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LOK SABHA

The following Report of the Select Committee on the Bill to regulate dividends on preference shares of Certain Companies was presented to Lok Sabha on the 5th December, 1960:—

Composition of the Select Committee

Shri Mulchand Dube—*Chairman.*

MEMBERS

2. Shri Naushir Bharucha
3. Shri Aurobindo Ghosal
4. Shri Bimal Comar Ghose
5. Shri Mool Chand Jain
6. Shri Prabhat Kar
7. Shri M. R. Masani
8. Dr. G. S. Melkote
9. Shri Radheshyam Ramkumar Morarka
10. Shri Narendrabhai Nathwani
11. Shri P. R. Ramakrishnan
12. Shri Satyendra Narayan Sinha
13. Shri G. D. Somani
14. Shri Ramsingh Bhai Varma
15. Shri Morarji Desai

DRAFTSMEN

Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*

Shri V. N. Bhatia, *Additional Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

Report of the Select Committee

I, the Chairman of the Select Committee to which the *Bill to regulate dividends on preference shares of certain companies was referred, having been authorised to submit the report on their behalf present their report with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 6th September, 1960. The motion for reference of the Bill to a Select Committee was moved by Dr. B. Gopala Reddi, Minister of Revenue and Civil Expenditure on the 14th November, 1960, and was discussed in the House on the 14th and 15th November, 1960 and was adopted on the 15th November, 1960.

3. The Committee held four sittings in all.

4. The first sitting of the Committee was held on the 17th November, 1960, to draw up a programme of work.

5. At their second sitting held on the 25th November, 1960, the Committee held a preliminary discussion on some of the provisions of the Bill.

6. The Committee considered the Bill clause by clause at their third sitting held on the morning of 1st December, 1960.

7. Seven memoranda/representations on the Bill were received by the Committee from different associations|individuals.

8. The Committee considered and adopted the Report in the evening of the 1st December, 1960.

9. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

*Published in Part II, Section 2 of the Gazette of India, Extraordinary, dated the 6th September, 1960.

10. *Clause* 3.—The Committee feel that the amount payable in respect of a preference share which carries a dividend free of income-tax should be increased from 25% to 30% of the stipulated dividend and in the case of a preference share which carries a dividend subject to income-tax, the amount payable thereon should be increased from 7% to 11% of the stipulated dividend.

This has been provided in the clause accordingly.

The other amendments made in the clause are of a clarificatory nature.

11. *Clause* 4.—The main purpose underlying this clause was to relieve companies having agricultural income from the burden of distributing increased dividends because agricultural income has always been exempt from income-tax and the general reduction in the tax on companies would not, in relation to such income, create any savings for enabling the declaration of increased dividends. The Committee feel that the extension of clause 4 to companies other than those having agricultural income may lead to complications which should be avoided. The clause should therefore apply only to companies whose profits and gains include agricultural income.

The clause has been revised accordingly.

12. The Select Committee recommend that the Bill as amended be passed.

MULCHAND DUBE,

Chairman,

Select Committee.

NEW DELHI;

The 3rd December, 1960.

Bill No. 71-A of 1960

THE PREFERENCE SHARES (REGULATION OF DIVIDENDS) BILL, 1960

(AS REPORTED BY THE SELECT COMMITTEE)

(Words side-lined or underlined indicate amendments suggested by the Committee, asterisks indicate omissions)

A

BILL

to regulate dividends on preference shares of certain companies.

BE it enacted by Parliament in the Eleventh Year of the Republic of India as follows:—

1. (*1*) This Act may be called the Preference Shares (Regulation of Dividends) Act, 1960. **Short title and commencement.**

(*2*) It extends to the whole of India:

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to the regulation of dividends on preference shares of banking and insurance companies and financial corporations.

2. In this Act, unless the context otherwise requires,— **Definitions.**

1 of 1956. (*a*) "Companies Act" means the Companies Act, 1956;

(*b*) "company" means an Indian company as defined in **11 of 1922.** clause (*7A*) of section 2 of the Indian Income-tax Act, 1922 and includes a company referred to in sub-clause (*ii*) of clause (*5A*) of the said section which has made arrangements for the declaration and payment of dividends within India in accordance with the rules made under the said Act;

(*c*) "preference share" means a share which having been issued and subscribed for before the 1st day of April, 1960, carries, as respects dividends, a preferential right to be paid a fixed amount or an amount calculated at a fixed rate;

(*d*) "previous year" has the same meaning as in the Indian Income-tax Act, 1922; **11 of 1922.**

(*e*) "stipulated dividend", in relation to a preference share, means the fixed amount or the amount calculated at a fixed rate which the holder of such share has a preferential right to be paid as dividend;

(*f*) all other words and expressions used but not defined in this Act and defined in the Companies Act shall have the meanings respectively assigned to them in that Act.

Regulation of dividends on preference shares in certain cases.

3. (*1*) Where the stipulated dividend in respect of a preference share of a company—

(*a*) is specified to be free of income-tax and no deduction is made therefrom on account of the income-tax payable by the company, or

(*b*) was being paid before the 1st April, 1960, without any deduction therefrom on account of the income-tax payable* by the company, notwithstanding the absence of any specification that the dividend would be free of income-tax,

every such share shall, as respects dividends declared after the commencement of this Act, carry a preferential right to be paid without any deduction aforesaid such amount as would exceed the stipulated dividend by thirty per cent. thereof.

(*2*) Where the stipulated dividend in respect of a preference share of a company issued and subscribed for after the 31st March, 1959 is free of income-tax and the company, besides paying the stipulated dividend to the holder of such share, pays to Government on his behalf any sum on account of income-tax payable thereon, then, every such share shall, as respects dividends declared after the commencement of this Act, carry a preferential right to be paid free of income-tax such amount as together with the sum aforesaid would exceed the stipulated dividend by thirty per cent. thereof.

(3) Where the stipulated dividend in respect of a preference share of a company—

(a) is specified to be subject to income-tax and a deduction is made therefrom on account of the income-tax payable* by the company, or

(b) was being paid before the 1st April, 1960, subject to a deduction therefrom on account of the income-tax payable* by the company, notwithstanding the absence of any specification that the dividend would be subject to income-tax, then, every such share shall, as respects dividends declared after the commencement of this Act, carry a preferential right to be paid subject to the deduction aforesaid such amount as would exceed the stipulated dividend by eleven per cent. thereof.

(4) Where a company has in relation to a preference share declared,—

(a) after the 31st March, 1959, and before the 1st July, 1960, a dividend in respect of a previous year relevant to its assessment year 1960-61 or a subsequent assessment year, or

(b) after the 30th June, 1960, and before the commencement of this Act, a dividend in respect of any previous year,

it shall declare, in respect of the said previous year, an additional dividend of such amount as, together with the dividend already declared, would exceed the stipulated dividend—

(i) by thirty per cent. of the stipulated dividend in the cases referred to in sub-section (1), or

(ii) by eleven per cent. of the stipulated dividend in the cases referred to in sub-section (3).

(5) For the purposes of sub-section (1), sub-section (3) and sub-section (4), any reference therein to the stipulated dividend shall, in respect of a preference share issued and subscribed for on or before the 31st March, 1959, be construed as a reference to the stipulated dividend as on that day.

(6) For the removal of doubts, it is hereby declared that any reference in this section to deduction made from a dividend "on account of the income-tax payable by the company" does not include any amount deducted by the company from that dividend under sub-section (3D) of section 18 of the Indian Income-tax Act, 1922.

of 1922.

Special provisions in relation to companies where a portion of their income is not chargeable to income-tax.

4. Where any preference share has been issued by a company any portion of the profits and gains of which in respect of the relevant period is exempt from income-tax under the Indian Income-tax Act, 1922, by reason of such portion being agricultural income, then, for the purpose of the increase in the dividend in relation to any such preference share under the provisions of section 3, the increase of thirty per cent. or eleven per cent. referred to therein shall be taken to be such proportion of the said thirty per cent. or eleven per cent., as the case may be, as the total amount of the profits and gains of the company excluding the portion of the profits and gains which is so exempt in respect of the relevant period bears to the total amount of the profits and gains thereof in respect of that period.

11 of 1922.

Explanation.—For the purposes of this section, "relevant period", in relation to the profits and gains of a company, shall mean—

(*a*) the previous years relevant to such of the three assessment years as immediately precede the assessment year ending on the 31st March, 1961, and in each of which the net result of the computation of profits and gains of the company has not been a loss or where there are only two such years, such two years, or where there is only one such year, such one year; or

(*b*) in any case where clause (*a*) is not applicable, the previous year relevant to the assessment year ending on the 31st March, 1961 or a subsequent assessment year immediately following thereafter in which the net result of the computation of profits and gains has not been a loss.

Over-riding effect of Act.

5. (*1*) The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law for the time being in force or in the memorandum or articles of a company or in any agreement between the company and its shareholders or in any resolution passed by the company in a general meeting or by its Board of directors.

(*2*) Notwithstanding anything contained in this Act, a company may, in the manner provided in section 106 of the Companies Act, increase the amount of dividend in respect of a preference share beyond the limit specified in section 3 or section 4 of this Act.

Act not to apply to participating preference dividends.

6. Nothing contained in this Act shall apply to such part of any dividend on preference shares as is referred to in clause (*i*) of the *Explanation* to sub-section (*1*) of section 85 of the Companies Act.

Power to make rules.

7. (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

M. N. KAUL,
Secretary.

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